

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:18-cv-191-FDW**

BRICE C. MOORE,)	
)	
Plaintiff,)	
)	
vs.)	
)	
H. CORPENING, et al.,)	<u>ORDER</u>
)	
Defendants.)	
_____)	

THIS MATTER is before the Court on initial review of Plaintiff’s Complaint pursuant to 28 U.S.C. § 1915(e) and § 1915A. (Doc. No. 1). Plaintiff is proceeding in forma pauperis. (Doc. No. 17).

I. BACKGROUND

Pro se Plaintiff Brice Moore is a North Carolina inmate incarcerated at Marion Correctional Institution in Marion, North Carolina. Plaintiff filed this action on July 10, 2018, pursuant to 42 U.S.C. § 1983, naming as Defendants (1) Marion Superintendent H. Corpening; (2) T.A. Baysworth, identified as a unit manager at Marion; and (3) T. Hamilton, identified as a unit manager at Marion. Plaintiff alleges that his federal constitutional rights are being violated because there is a strong smell of feces in the ventilation system at Marion.

II. STANDARD OF REVIEW

Because Plaintiff is proceeding in forma pauperis, the Court must review the Complaint to determine whether it is subject to dismissal on the grounds that it is “frivolous or malicious [or] fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2). Furthermore, § 1915A requires an initial review of a “complaint in a civil action in which a prisoner seeks

redress from a governmental entity or officer or employee of a governmental entity,” and the court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint is frivolous, malicious, or fails to state a claim upon which relief may be granted; or seeks monetary relief from a defendant who is immune from such relief. In its frivolity review, this Court must determine whether the Complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989).

III. DISCUSSION

The Court notes that Plaintiff has filed an almost identical action in this Court against the same Defendants, and that action is pending in the Court. See (Moore v. Corpening, No. 1:19cv5 (W.D.N.C.)). Furthermore, in the newly filed action, Plaintiff states in his Complaint that he “dropped this case before, . . . so I’m refileing the case,” indicating that he intended to take a voluntary dismissal of this action. (Id., Doc No. 1 at ¶ 37). Because this action is duplicative of the other action pending in this Court, this action will be dismissed.

IV. CONCLUSION

For the reasons stated herein, the Court will dismiss this action without prejudice because Plaintiff has an almost identical action pending in this Court against the same Defendants.

IT IS, THEREFORE, ORDERED that:

- (1) Plaintiff’s Complaint is dismissed without prejudice.
- (2) The Clerk is instructed to terminate this action.
- (3) The Clerk is instructed to termination the motions in Doc. Nos. 4, 8, 11, 13, and 15.

Signed: January 11, 2019



Frank D. Whitney
Chief United States District Judge

